

VOICES OF DISABILITY BY: JERRY WOLFFE

Take legal steps to support kids after you're gone

So many times distressed parents have called to ask, "What can we do to make sure that our disabled adult child is taken care of when we die?"

Until today, I didn't have a solid answer and that's nagged at me. But there are legal ways to provide for your child without being wealthy.

The common assumption that Johnny will be taken care of by his sister, Jane, is not true, and it's unfair to Jane to expect her to take care of a disabled sibling for the rest of his life. I have seen only one case in which a woman took her disabled sister into her home after their remaining parent died, and provided her with what she needed to survive.

"If you were to die with only a will in place, or no planning at all for your disabled child, any estate left to your child is, in reality, a gift to the government," says Danielle Mayoras, an attorney

with the Center for Special Needs Planning, which includes the Center for Elder Law, a division of Barron, Rosenberg, Mayoras & Mayoras of Troy.

The solution is setting up a Special Needs Trust

"It's the only reliable method to make sure your inheritance and gifts benefit your child with a disability," Mayoras says. "The point of the Special Needs Trust is to keep the assets in a form that will be available for your child, but which will not disqualify him or her from benefits for which he or she might be eligible."

A disabled person is not eligible for Medicaid and Social Security Income if he or she has assets of \$2,000 or more

"The parents have to do pro-active planning before they die," Mayoras says. "It's an empty shell. Money and assets go into the Special Needs Trust when mom and dad pass away."

The Special Needs Trust allows for dozens of distributions for the disabled child because the property is in the name of the trust, not the child, and the child is still eligible for SSI and Medicaid.

Things that can be acquired by the trust include a car or van, accounting services, appliances, cameras, computer hardware and software and dental work not covered by Medicaid. In addition, the funds in the Special Needs Trust can be used so the disabled adult child can go to conferences, pay for elective surgery, buy fitness equipment, purchase gas and maintain a vehicle, throw parties, set up home alarms, make home improvements, pay legal fees, get massages, buy clothing and other necessities, as well as obtain luxury items that add spice to life.

The trust cannot cover the disabled adult child's rent, food or cash, or SSI benefits will be

reduced. The trust fund also cannot be benefit anyone other than the disabled person.

The parents also should set up a Revocable Living Trust for themselves so that when they die their assets go from their trust to the Special Needs Trust. If something is purchased with the assets — for example, a home — the house goes into the trust and the adult child can live in the home without loss of federal benefits.



Attorney Danielle Mayoras works to put assets where they can benefit disabled children.

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People need legal facts about establishing trust for disabled child's security

So, what if the parents don't have sufficient assets to set up their disabled heir for life? The parents should purchase a "Second to Die" insurance policy. Under such a policy, both parents must undergo physical exams, but even if one is deemed "uninsurable," the policy will still be approved, Mayoras says.

When the second parent dies, the insurance money — whether \$500,000 or \$1 million — goes into the disabled child's Special Needs Trust. The policy is in effect as long as premiums are being paid.

She says a lot of people think because they don't have a lot of assets, or if they have a will, they can avoid probate court.

Wrong.

If a will goes to probate, the information is public and anyone can check how much value in stocks, bonds, investments and property you owned. Second, fees are charged in probate to process a will. Third, a will can be closed after a minimum of four months, but, realistically, the average estate takes between a year and 18 months to close, Mayoras said.

During that time, the disabled adult child has no financial safety net.

It's also a good idea to take care of other issues if anyone becomes disabled. You need to find someone to manage your finances and investments and to make medical decisions for routine treatment and life-and-death issues.

The first problem is resolved by creating a "Durable Power of Attorney," Mayoras says. This is a legal document that

allows you to delegate your personal, health care and financial responsibilities to an "agent" of your child or self. The authority you give your agent can be as broad or narrow as you choose.

If you don't create a Durable Power of Attorney, no one can legally act on your behalf until the court appoints a conservator and/or guardian. There also are no guaran-

tees the court would select the same person, such as a spouse, that you would have chosen.

A family also needs to create a Patient Advocate and Medical Power of Attorney. The patient advocate speaks for the patient in routine matters. A person who has medical power of attorney has the authority to have a person removed from life support if he or she already is on it, but did not choose to live at all costs. Without this authority, family or friends cannot force a hospital to remove a life-support machine "unless there is an order from probate court allowing them to do so," Mayoras says.

Nursing home or attendant care services can cost between \$30,000 and \$100,000 a year. A millionaire can be wiped out in less than 10 years. So, it's essential to one's financial health to buy long-term care insurance, Mayoras says.



Danielle Mayoras, an attorney and counselor for The Center for Special Needs Planning, talks with fellow attorney Don Rosenberg in her Troy office.

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"Now that we're finished setting up our estate, and only need to periodically review our plans, I feel like an enormous burden has been lifted up from me," a parent of a disabled young man, Samuel, said after setting up a Special Needs Trust for him.

"The big, black scary shadow is gone," the parent, who was quoted in a brochure, says. "I know I've done all I can do for that part of his future, something that was extremely important to do, and I am very relieved."

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